

**IN THE UNITED STATES DISTRICT COURT  
FOR WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**SHELLEY THOMSON,**

**Plaintiff,**

**VS.**

**CHARLES EDWARD LINCOLN, and  
PEYTON YATES FREIMAN,**

**Defendants.**

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**CIVIL ACTION NO. SA-08-CA-105-FB**

**ORDER REMANDING CASE**

Before the Court is the status of the above styled and referenced cause. On April 10, 2008, this Court entered an Order Concerning Status of Case and Advisory Concerning Remand advising the defendants that if the entire filing fee of \$350.00 was not tendered to the Court by May 9, 2008, the case would be remanded (docket #7). Also on April 10, 2008, an Emergency Motion to Modify Sanctions was filed by defendant Charles Edward Lincoln, III, pro se. (docket #8), and a check in the amount of \$350.00 was tendered to the Court.

The Court has conducted a review of this case and the defendant's motion. The Court, as a preliminary matter, notes that on or about January 25, 2008, plaintiff Shelley Thomson ("Thomson") filed her "Original Petition and Application for Temporary Restraining Order" in the 274th Judicial District Court of Comal County, Texas, naming Charles Lincoln ("Lincoln") and Peyton Yates Freiman as defendants.<sup>1</sup> On February 8, 2008, Defendant Lincoln, representing himself, filed a pro se notice of removal to this Court.<sup>2</sup> The case was randomly assigned to the undersigned and given cause number SA-08-CA-105. The only motion currently pending is Defendant Lincoln's "Response to Plaintiff's Motion for Admission Pro Hac Vice & Emergency Motion to Modify Sanctions & Defendant's Motion

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<sup>1</sup> Docket no. 1, exhibit A.

<sup>2</sup> Docket no. 1.

to Disqualify Plaintiff's Counsel.”<sup>3</sup> The Court notes Defendant Lincoln's argument that this Court should “give no credence nor binding effect whatsoever to Judge Walter S. Smith's Order of Sanctions against Charles Edward Lincoln . . . .”<sup>4</sup> The Court, in reviewing the procedural history of Civil Action No. W-08-CA-10, finds that on March 25, 2008, in a case styled Abbott v. Simon, Defendant Lincoln was sanctioned by Western District of Texas Chief Judge Walter S. Smith.<sup>5</sup> Judge Smith found Mr. Lincoln had “engaged in harassment of public officials by filing numerous frivolous lawsuits and removals to the federal courts in the Western and Southern Districts of Texas” and sanctions were “appropriate and necessary to deter future sanctionable conduct by . . . Lincoln.”<sup>6</sup> Judge Smith ordered that Mr. Lincoln and Daniel Simon were jointly and severally liable for a monetary sanction of \$150,000.00 “because of their pattern of harassing litigation,” and that “any lawsuits either filed or removed to any federal court in the Western District of Texas by . . . Lincoln are hereby dismissed with prejudice.”<sup>7</sup>

On April 4, 2008, Plaintiff Thomson, claiming she learned of Judge Smith's March 25, 2008 Sanctions Order “through an informal network of Lincoln's various victims,” filed an “Emergency Motion to Modify Order Sanctioning Lincoln” in the Waco case.<sup>8</sup> In the motion, Ms. Thomson summarizes the procedural and factual background of this case before arguing she would be prejudiced if Judge Smith's Order was “read literally” because Mr. Lincoln removed her case from Comal County,

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<sup>3</sup> Docket no. 8.

<sup>4</sup> Id. at 8.

<sup>5</sup> Abbott v. Simon, Civil Cause No. 6:08-CA-10-WSS, docket no. 44.

<sup>6</sup> Id. at 2.

<sup>7</sup> Id. Additionally, Judge Smith ordered that Lincoln was “prohibited from filing any further pleadings or lawsuits in any federal court in Texas, or removing any Texas state case to federal court, until the sanctions have been wholly paid into the registry of the court, or unless leave of court is first granted.” Id.

<sup>8</sup> Id., docket no. 46.

and a literal reading of the Order would mean SA-08-CA-105 should be dismissed with prejudice.<sup>9</sup> In response to Ms. Thomson's emergency motion, on April 8, 2008, Judge Smith granted the motion, stating "the Order of Sanctions previously entered in this case against . . . Charles Lincoln is amended to reflect that Case No. SA-08-CA-105 should be remanded to state court rather than dismissed."<sup>10</sup> A copy of Judge Smith's Order is attached to this Order.

Accordingly, IT IS HEREBY ORDERED that this case is **REMANDED** to the 274th Judicial District Court in Comal County, Texas, and the Clerk of this Court shall enter judgment accordingly and send a certified copy of this Order to the Clerk of the 274th Judicial District Court, Comal County, Texas, at the time of sending other paperwork, as required, pursuant to the Order of Remand.. IT IS FURTHER ORDERED that defendant's "Response to Plaintiff's Motion for Admission Pro Hac Vice & Emergency Motion to Modify Sanctions & Defendant's Motion to Disqualify Plaintiff's Counsel"<sup>11</sup> is **DENIED**, and the April 14, 2008 Order referring the case to United States Magistrate Judge Pamela Mathy is **RESCINDED**.

It is so **ORDERED**.

SIGNED this 21<sup>st</sup> day of April, 2008.



FRED BIERY  
UNITED STATES DISTRICT JUDGE

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<sup>9</sup> Id. at 1-2.

<sup>10</sup> Id., docket no. 47 at 2. The Judge further ordered that any additional suits removed to any federal court in the Western District of Texas by Charles Lincoln "should be remanded to the state court from whence they were removed rather than dismissed." Id.

<sup>11</sup> Docket no. 8.